

The Honorable Ricardo S. Martinez

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

Eon-Net, L.P.,

Plaintiff,

V.

## Flagstar Bancorp,

Defendant.

CASE NO. C 05-2129 RSM

**DECLARATION OF MELISSA J.  
BAILY IN SUPPORT OF  
FLAGSTAR'S MEMORANDUM  
REGARDING FEES AND COSTS**

1 I, Melissa J. Baily, declare as follows:

2 1. I am an attorney admitted to practice in the State of California and the State of  
3 New York, and I am a member of the law firm of Quinn Emanuel Urquhart Oliver & Hedges,  
4 LLP (“Quinn Emanuel”). I represent Flagstar Bank (“Flagstar”) in this action. Except as  
5 otherwise stated, I have personal firsthand knowledge of the matters set forth in this Declaration,  
6 and if called as a witness I would testify competently to those matters.

7 2. Quinn Emanuel is lead counsel for Flagstar in this action.

8 3. Attached hereto as Exhibits 1 through 25 are true and correct copies of Quinn  
9 Emanuel invoices paid by Flagstar. The invoices reflect fees and costs incurred in connection  
10 with the defense of Eon-Net’s patent infringement claims between October 2007 and December  
11 2009. Certain invoices are redacted to conceal information protected by the attorney-client  
12 privilege and/or work product doctrine.

13 4. The costs reflected in the invoices attached as Exhibits 7 and 10 include fees paid  
14 to a consulting expert (*see* paragraphs 7-8 below). Excluding those payments, the total fees and  
15 costs reflected on the invoices attached as Exhibits 1 through 25 is \$382,494.18.

16 5. In January 2010, Flagstar incurred at least \$3,025 in attorneys’ fees and expenses,  
17 which have not yet been invoiced by Quinn Emanuel.

18 6. Byrnes & Keller LLP is local counsel for Flagstar in this action.

19 7. Attached as Exhibits 26 through 31 are true and correct copies of Byrnes & Keller  
20 invoices paid by Flagstar. The invoices reflect fees and costs incurred in connection with the  
21 defense of Eon-Net’s patent infringement claims between October 2007 and December 2009.  
22 Certain invoices are redacted to conceal information protected by the attorney-client privilege  
23 and/or work product doctrine.

24 8. The total fees and costs reflected on the invoices attached as Exhibits 26 through  
25 31 is \$4,049.16.

26 9. Flagstar retained a consulting expert, Dr. James A. Fogarty, to assist with the  
27 identification of relevant prior art, the preparation of invalidity contentions, and the evaluation of

1 Eon-Net's infringement contentions. Dr. Fogarty's curriculum vitae is attached hereto as Exhibit  
2 32.

3 10. Attached hereto as Exhibits 33 and 34 are true and correct copies of Dr. Fogarty's  
4 invoices, which were paid by Flagstar. Certain contact information for Dr. Fogarty was redacted  
5 from these invoices.

6 11. Flagstar retained a testifying expert, Dr. Kenneth Zeger, to assist with the analysis  
7 of the patents at issue in this case and to provide expert testimony regarding claim construction  
8 issues. Dr. Zeger's curriculum vitae is attached hereto as Exhibit 35.

9 12. Attached hereto as Exhibits 36 through 39 are true and correct copies of Dr.  
10 Zeger's invoices, which were paid by Flagstar. Certain contact information for Dr. Zeger was  
11 redacted from these invoices.

12 13. The total fees and costs reflected on the invoices attached as Exhibits 33, 34, and  
13 through 36 through 39 is \$102,607.14.

14 14. All invoices attached hereto have been reviewed and edited.

15 15. The fees and costs incurred by Flagstar since this case was remanded by the  
16 Federal Circuit in October 2007 total \$492,175.48. All fees and costs charged are reasonable.  
17 Especially in light of the minimal settlement offer by Eon-Net, significant measures were  
18 undertaken to minimize costs and fees.

19 16. On April 2, 2008, Flagstar served its invalidity contentions addressing the 92  
20 patent claims (from three patents) asserted by Eon-Net in this case. Those contentions included  
21 391 pages of charts comparing the elements of each claim to prior art references. The  
22 contentions cited 28 prior art references.

23 17. Attached hereto as Exhibit 40 is a true and correct copy of pages I-128 and I-129  
24 of the American Intellectual Property Law Association's Report of the Economic Survey (2009).

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1 I declare under penalty of perjury that the foregoing is true and correct.  
2 Executed this 1st day of February, 2010, in San Francisco, California.

3 \_\_\_\_\_ /s/Melissa J. Baily

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